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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,987	05/20/2004	Jeffrey Scott Dupont	7853RD	8690

27752 7590 10/18/2004

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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/849,987	DUPONT ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 May 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-42* is/are pending in the application.

4a) Of the above claim(s) *43 and 44* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-44* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-44 are pending. The preliminary amendment filed 5/20/04 has been entered.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-42, drawn to a laundry detergent containing a polyamine, classified in class 510, subclass 499.

II. Claims 43 and 44, drawn to a method for cleaning fabric, classified in class 8, subclass 137.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the composition of Group I can be used in a materially different method such as in a process of washing dishes.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Laura Grunzinger on October 4, 2004, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-42. Affirmation of this election must be made by applicant in replying to this Office action. Claims 43 and 44 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the

applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4, 5, and 8 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 99/06519.

'519 teaches a stable, aqueous heavy duty gel laundry detergent compositions comprising nonionic surfactant, fatty acid, and specially selected agents to provide exceptional cleaning benefits. See Abstract. Additionally, polyethoxylated-polyamine polymers may be used and '519 suggest polyamine polymers having the same general formula as recited by the instant claims. Additionally, the compositions may contain surfactants. The levels of these polyethoxylated-polyamine polymers is in the range

from about 0.1% to about 10% by weight. Suitable anionic surfactants include alkyl polyethoxylate sulfates, alkyl sulfates, fatty acids, etc. See page 10, line 300 to page 11, line 315. Suitable nonionic surfactants includeethoxylated alcohols, ethoxylated alkyl phenols, etc. See page 12, lines 350-375. Also, suitable amphoteric surfactants include aliphatic derivatives of secondary or tertiary amine, or aliphatic derivatives of heterocyclic secondary and tertiary amines in which the aliphatic radical can be straight chain or branched. See page 16, lines 490-505. Additionally, peroxidase enzymes may be used in combination with oxygen sources

Specifically, '519 teaches laundry compositions containing 21% ethoxylated sulfate surfactant, 4% C12-C14 glucosamide, 4.5% C12-C14 EO7, 1.3 C8-C10 amidopropylamine, 3% citric acid, 5.4% palm kernel fatty acid, 5.4% rapeseed fatty acid, 0.6% protease, 1% polyethoxylated-polyamines, 0.7% ethanol, 2% boric acid, etc. Se page 39, line 1280 to page 40, line 60.

Accordingly, the teachings of '519 anticipate the material limitations of the instant claims.

Claims 3, 6, 7, 11-22, 24, 26, 27-38, and 40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO99/06519.

'519 is relied upon as set forth above. Note that, the Examiner asserts that the polyethoxylated-polyamines taught in Examples listed on page 40 are the same as those recited by the claims. Accordingly, the teachings of '519 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '519 is not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed acid polyethoxylated-polyamine compound in order to provide the optimum cleaning properties to the composition because '519 teaches that the type of polyethoxylated-polyamine compound added to the composition may be varied.

Claim 23, 25, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/06519.

'519 is relied upon as set forth above. However, '519 does not teach, with sufficient specificity, a composition containing the specific surfactant and polyamine in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a polyamine and the specific surfactant in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '519 a cleaning composition containing a polyamine and specific surfactant in the specific proportions as recited by the instant claims.

Claims 11-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Appel et al (US 6,242,409) in view of WO99/06519.

Appel et al teach catalytically bleaching substrates, especially laundry fabrics, with atmospheric oxygen or air. A method of bleaching a substrate is provided that

comprises applying to the substrate, in an aqueous medium, an organic substance which forms a complex with a transition metal, the complex catalyzing bleaching of the substrate by atmospheric oxygen. See Abstract. The organic substance may comprise a preformed complex of a ligand and a transition metal. See column 3, lines 5-15. The transition metal complex may be used in a composition to clean fabrics additionally comprising a surface-active material, detergency builder, etc. See column 19, lines 35-50. Suitable surfactants include alkyl sulfates, alkyl benzene sulphonates, etc. See column 19, line 58 to column 20, line 40. Additionally, the compositions may contain additives such as carbonates, lather boosters, lather depressants, anti-redeposition agents, stabilizers, enzymes, perfumes, etc. See column 21, lines 19-40.

'519 is relied upon as set forth above.

Appel et al do not teach the use of a polyamine compound or a composition containing a polyamine compound, a surfactant, a transition-metal bleach catalyst or the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a polyamine compound as recited by the instant claims in the bleaching composition taught by Appel et al, with a reasonable expectation of success, because '519 teaches the use of the specific polyamine compounds as dispersants in a similar laundry detergent composition and, further, Appel et al teach the use of various conventional additives which would encompass dispersants.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a polyamine compound, a surfactant, a transition-metal bleach catalyst or the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because Appel et al in combination with '519 suggests a composition containing a polyamine compound, a surfactant, a transition-metal bleach catalyst or the other requisite components of the composition in the specific proportions as recited by the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,525,012 or claims 1-10 of US 6,579,839. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-13 of US

6,525,012 or claims 1-10 of US 6,579,839 encompass the material limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a polyamine, mid-branched chain surfactants, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because claims 1-13 of US 6,525,012 or claims 1-10 of US 6,579,839 suggest a cleaning composition containing a polyamine, mid branched chain surfactants, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
October 14, 2004